Visone Construction, Inc. *and* International Union of Operating Engineers, Local Union No. 17. Cases 3–CA–18309 and 3–CA–19295

April 16, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On January 16, 1997, Administrative Law Judge Howard Edelman issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified and set forth in full below.[3]

[1] We have corrected numerous inadvertent errors in the judge's decision. Among these errors were the judge's various incorrect references to the expiration date of the 1990–1993 Associated General Contractors (AGC) agreement; we note that the correct expiration date of that agreement was March 31, 1993. Also, at par. 6 of the "Statement of the Case" section of his decision, the judge incorrectly stated that the termination clause in the AGC contract provided that a party had to serve written notice of proposed changes to the contract by January 31, 1992; the correct date was January 31, 1993. The judge also, at par. 6 of his "Analysis and Conclusions" section, apparently failed to complete the sentence which reads "The AGC contract, which had an expiration date of March 31, 1993." We note that it appears that the judge meant to add to that sentence his earlier finding that the AGC contract, which had an expiration date of March 31, 1993, required notification of termination by January 31, 1993, and that the Independent Building Contractors contract required such notification no later than 90 days before the contract's expiration date of May 31, 1993.

[2] The General Counsel in his exceptions noted several inadvertent errors in the judge's conclusions of law, including incorrect unit descriptions and incorrect references to earlier paragraphs in the conclusions of law. We have set forth new conclusions of law to correct the errors noted by the General Counsel.

The General Counsel also noted that the judge misstated the date of the Union's second information request in the conclusions of law, the remedy, the recommended Order, and the notice to employees. The correct date for the Union's second information request was October 19, 1994. We have modified the above portions of the judge's decision accordingly.

[3] The General Counsel contends that the judge erred in his recommended Order and notice to employees by requiring the Respondent to cease and desist from refusing to comply with the terms of the informal Board settlement in Case 3–CA–18309 and affirmatively to comply with the terms of that settlement agreement. In this regard, the General Counsel notes that the settlement agreement was properly vacated by the Acting Regional Director in his order consolidating cases, order vacating settlement agreement, consolidated complaint and notice of hearing, which issued on June 30, 1995. The General Counsel also contends that the judge erred by requiring the Respondent to bargain in good faith with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. In this regard, the General Counsel notes that the consolidated complaint did not seek a bargaining order. We find merit in the General Counsel's exceptions and have modified the judge's recommended Order and notice to employees accordingly. We have further modified the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material since July 13, 1992, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit by entering into a collective-bargaining agreement with the Union (the Associated General Contractors (AGC) agreement) which was effective by its terms from April 1, 1990, through March 31, 1993, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act:

> All engineers, apprentice engineers, assistant engineers, maintenance engineers (also referred to as mechanics), firemen, mechanics' helpers, maintenance welders, maintenance welders' helpers, maintenance burners, master mechanics, assistant master mechanics, and all other skills and crafts when within the jurisdiction of the Union, and all persons performing the classes of work described in the AGC agreement no matter where such work is performed within the territorial jurisdiction of the Union.

4. The AGC agreement has automatically renewed until at least March 31, 1995, by the failure of the Respondent to seek termination or modification pursuant to the terms of such agreement.

5. At all times material since July 13, 1992, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit by entering into a collective-bargaining agreement with the Union (the Independent Building Contractors (IBC) agreement) which was effective by its terms from June 1, 1990, through May 31, 1993, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act:

> All engineers, apprentice engineers (also referred to as oilers), maintenance engineers (also referred to as mechanics), oilers (also referred to as maintenance engineers), foremen, maintenance welders, master mechanics, and assistant master mechanics, and all other workers within the jurisdiction of the

Union and all persons performing work described in the IBC agreement.

6. The IBC agreement has automatically renewed until at least May 31, 1995, by the failure of the Respondent to seek termination or modification pursuant to the terms of such agreement.

7. On December 9, 1993, and October 19, 1994, the Union requested, in writing, that the Respondent furnish it with certain information necessary and relevant for the Union to perform and enforce the AGC and IBC agreements.

8. Since December 9, 1993, the Respondent has failed and refused to provide the information requested by the Union as described above in paragraph 7 of the Conclusions of Law.

9. By failing to comply with the Union's request for information as described above in paragraph 8 of the Conclusions of Law, the Respondent has violated Section 8(a)(5) and (1) of the Act.

10. The Respondent failed and refused to comply with the terms of an informal settlement agreement in Case 3–CA–18309.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Visone Construction, Inc., Depew, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified and set forth in full below.

1. Cease and desist from

(a) Refusing to bargain in good faith with International Union of Operating Engineers, Local Union No. 17 by refusing a request to furnish information which is relevant and necessary to the Union's performance as the exclusive bargaining representative of the employees in the following appropriate units:

> All engineers, apprentice engineers, assistant engineers, maintenance engineers (also referred to as mechanics), firemen, mechanics' helpers, maintenance welders, maintenance welders' helpers, maintenance burners, master mechanics, assistant master mechanics, and all other skills and crafts when within the jurisdiction of the Union, and all persons performing the classes of work described in the AGC agreement no matter where such work is performed within the territorial jurisdiction of the Union.
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> All engineers, apprentice engineers (also referred to as oilers), maintenance engineers (also referred to as mechanics), oilers (also referred to as maintenance engineers), foremen, maintenance welders, master mechanics, and assistant master mechanics, and all other workers within the jurisdiction of the Union and all persons performing work described in the IBC agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union with the information sought by its December 9, 1993, and October 19, 1994 letters.

(b) Within 14 days after service by the Region, post at its Depew, New York facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 9, 1993.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

3. Substitute the attached notice for that of the administrative law judge.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain in good faith with International Union of Operating Engineers, Local Union No. 17 by refusing a request to furnish it with information which is relevant and necessary to its performance as the exclusive bargaining representative of the employees in the following appropriate units:

All engineers, apprentice engineers, assistant engineers, maintenance engineers (also referred to as mechanics), firemen, mechanics' helpers, maintenance welders, maintenance welders' helpers, maintenance burners, master mechanics, assistant master mechanics, and all other skills and crafts when within the jurisdiction of the Union, and all persons performing the classes of work described in the AGC agreement no matter where such work is performed within the territorial jurisdiction of the Union.

All engineers, apprentice engineers (also referred to as oilers), maintenance engineers (also referred to as mechanics), oilers (also referred to as maintenance engineers), foremen, maintenance welders, master mechanics, and assistant master mechanics, and all other workers within the jurisdiction of the Union and all persons performing work described in the IBC agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with the information sought by its December 9, 1993, and October 19, 1994 letters.

VISONE CONSTRUCTION, INC.

Michael J. Israel, Esq., for the General Counsel.
Jeremy Cohen, Esq. (Flaherty, Cohen, Grande, Randazzo & Doren, P.C.), for the Respondent.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on July 24, in Buffalo, New York.

On February 18, 1994, a complaint issued in Case 3–CA–18309. This complaint was based on a charge filed by the International Union of Operating Engineers, Local No. 17 (the Union), against Visone Construction, Inc. (the Respondent). On September 23, 1994, Respondent entered into an informal Board settlement agreement. On October 7, 1994, the Regional Director for Region 3 of the National Labor Relations Board approved the settlement agreement. The settlement provided that Respondent furnish the Union with certain information necessary to enforce its collective-bargaining agreement, then in effect with the Union. Respondent failed to supply the information set forth in the settlement to the Union. On April 11, 1995, the Union filed the charge in Case 3–CA–19295. On June 30, 1995, Region 3 issued an order consolidating cases, an order vacating the settlement in Case 3–CA–18309, and a consolidated complaint. This complaint alleges the same failure to supply the Union the information alleged in Case 3–CA–18309, and the failure to supply additional information to the Union.

During the course of the trial of this case, Respondent admitted that the Union had made requests for the information alleged in Appendices A and B of the complaint. Respondent additionally admitted that the information requested was necessary for the Union's performance as the exclusive collective-bargaining representative of the employees described in the complaint, set forth in detail below.

The Respondent is a corporation engaged in the building and construction industry. The Respondent has an office and place of business in Depew, New York. Respondent annually purchases and receives at its Depew, New York office goods and materials valued at in excess of $50,000 directly from points located outside the State of New York. It is admitted, and I find, that Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.

It is also admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

On or about July 13, 1992, Respondent's president, Lucian Visone Jr., executed two separate collective-bargaining agreements with the Union; the Associated General Contractors (AGC) agreement, which covers heavy highway work, and the Independent Building Contractors (IGC) agreement, which covers site work. Respondent executed the above agreements as an independent employer. These agreements contained the same provisions as the multiemployer agreements. Respondent was no longer a member of such employer associations for purposes of collective bargaining. The AGC agreement had a termination clause which provided that the contract was effective from April 1, 1990, to March 31, 1993, and during each calendar year thereafter, unless written notice of proposed changes were served by either party by January 31, 1992, or any year thereafter. The IGC agreement contained a termination clause which provided that the agreement was effective from June 1, 1990, to May 31, 1993, and shall continue from year to year, unless written notice to the other party of a desire to terminate or modify the agreement was given no later then 90 days before the contract's expiration date, or to the anniversary date in any subsequent year.

In the spring of 1993, the Union negotiated industrywide contracts with the AGC and IBC employer associations. Copies of each collective-bargaining agreement were sent to Respondent for execution. Visone, in reply to receiving the two collective-bargaining agreements, sent Union President Thomas Hopkins a letter dated May 14, 1993, which stated: "We have just received your new contracts. Currently we have no work, therefore we are not planning to sign your new agreement."

On June 8, 1993, Richard Furlong, the Union's attorney, sent a letter to Respondent, stating that Respondent's failure

to send written notification of an intention to terminate or modify the 1990–1993 agreements, pursuant to the termination provisions set forth in the agreements has resulted in Respondent being bound for an additional year on each agreement.

Shortly after June 8, 1993, Lucian Visone telephoned Furlong. Visone told Furlong that he did not want to be bound to the union contracts. Furlong told Visone that he had not followed the contractual provisions in this regard and was therefore bound to both contracts.

During the summer through winter of 1993, the Union became aware of Respondent's involvement in several construction projects, which included a highway bridge project at Route 5 and Smoke Creek, in Woodlawn, a suburb of Buffalo, and the construction of a bus garage for Niagara Frontier Transportation, in the city of Buffalo.

With respect to the garage project, Union Attorney Furlong and Union President Hopkins met with representatives of Ciminelli Construction, the general contractor. The union representatives were informed by the Ciminelli representatives that Respondent had been used as a subcontractor on the job.

On December 9, 1993, following the meeting with Ciminelli, Furlong sent Respondent a letter dated December 9, 1993, requesting that Respondent furnish it with a list of each project that Respondent worked on from January to December 1993, and for each project, the names of the employees, the total hours of work, copies of the employees paychecks, contracts, and work orders. The letter requested a complete response by December 23, 1993.

On January 4, 1994, having received no response by Respondent to its December 9, 1993 letter, the Union filed its charge in Case 3–CA–18309.

As set forth above, following the issuance of the initial complaint, Respondent entered into an informal Board settlement agreement dated September 23, 1994. The agreement provided that Respondent would furnish the Union with "the information sought by it in its letter of December 9, 1993." The settlement agreement further provided that Respondent would not refuse to recognize the Union as its employees' collective-bargaining representative, and would not refuse, during the terms of the collective-bargaining agreements with the Union to supply the Union, on request, with any information requested that was relevant to the Union's administration of its collective-bargaining agreements with Respondent.

On October 19, 1994, Union Attorney John Ziegler sent Respondent a letter requesting the information provided for in the settlement, but for the period of December 9, 1993, to October 19, 1994. The letter requested the information by November 4, 1994. The letter also warned Respondent that its failure to comply would result in the Union seeking a revocation of the Board settlement.

Ziegler credibly testified that he sent the October 19 letter updating the original information request because on review he believed that both collective-bargaining agreements had not been legally terminated by Respondent, that they had renewed, resulting in a second renewal, and thus obligated Respondent to furnish the information requested on December 9, 1993, to include the period January 1993 through October 19, 1994. Ziegler credibly testified that such information was required to enable the Union to properly police its contracts with Respondent. Ziegler also testified that another purpose of this letter was to remind Respondent that it had not furnished the information required by the settlement.

On November 9, 1994, Respondent by its attorney, Jeremy Cohen, sent the Union a letter stating that Respondent would only respond to the information requests, but that such information would be required only until the expiration dates of the collective-bargaining agreements in 1993. Attorney Cohen based his response on his legal conclusion that Respondent's collective-bargaining relationships with the Union ended on the expiration of the agreements in 1993. Thus, Respondent was taking a legal position that the AGC contract expired on March 31, 1992, and that the IBC contract expired on May 31, 1993.

On April 11, 1995, having not received the information requested by its October 19, 1994 letter, which included the information that Respondent had agreed to furnish pursuant to the Board settlement, the Union filed the unfair labor practice charge in Case 3–CA–19295. On April 17, the Union by a letter to the Region, requested the settlement in Case 3–CA–18309 be revoked and the complaint reinstated.

Respondent has provided none of the information requested on December 9, 1993, and on October 19, 1994.

Respondent contends that during July 1992 there was a meeting between Visone Jr. and Hopkins in which an oral agreement was reached that limited the contracts' application to certain ongoing projects and that Hopkins allegedly agreed thereafter, to "leave all my other work alone and not bother me on any of it." The counsel for the General Counsel objected to the admission of such oral testimony taken for the purpose of modifying or varying the terms of a written collective-bargaining agreement whose terms included a specific provision relating to the conditions required for termination of such agreements. I overruled such objection in order to permit Respondent to present evidence in support of its contention. Visone Jr. gave testimony consistent with Respondents' contention.

In rebuttal testimony, Union President Hopkins testified credibly that as union president he deals year to year with 180 to 250 contractors who are signatory to the association contracts and cannot recall any specific conversation with Visone. However Hopkins credibly testified that contractors frequently ask him to vary one provision or another, but that his practice is not to agree to oral modifications because it "would result in chaos and we wouldn't, be able to perform our job . . . . It just wouldn't work. What's in the contract we negotiate, that's what we live by."

Given the large numbers of employers covered by the Union's contracts, I find Hopkins testimony credible. Moreover, following Furlong's June 8, 1993 letter to Respondent stating that Respondent had failed to send notification of termination or modification, Visone thereafter contacted Furlong by telephone and told Furlong that he did not want to be bound by the Union's contracts. Furlong replied that Visone had not complied with the contracts termination of contract provisions. At no time during this conversation, or thereafter did Visone bring to the attention of the Union or its attorneys the alleged oral agreement. Accordingly, I find Visone's testimony as to the alleged oral agreement not credible.

Analysis and Conclusions

Respondent takes the legal position that pursuant to the alleged oral agreement between Visone and Hopkins, Respondent was no longer bound to the AGC contract after its nominal expiration date on May 31, 1992, and was no longer bound to the IBC contract after its nominal expiration date on May 31, 1993.

The Board has addressed the issue of contract termination and automatic renewal in a case involving the predecessor agreement to the Union's 1990–1992 contact with the AGC, which predecessor contract contained the same termination language (art. XVIII) as the instant contract. See *SCC Contracting*, 307 NLRB 1519 (1992), in which the Board found the contract's termination language to be "plain and unambiguous," and that the employer was bound to the contract for a 1-year period after the nominal expiration date by operation of its automatic renewal provisions. Id. at 1526.

More specifically, in *SCC Contracting*, an independent employer, as in the instant case, had entered into the AGC contract with the union. As in this case, on the negotiation of a successor multiemployer contract, the Union sent the Employer a copy of the new agreement for execution, which the employer did not sign.

The Board concluded that, in the absence of any notice of termination of the existing agreement, the employer was bound to a contract extension through the agreement's automatic renewal provision. The administrative law judge whose decision the Board adopted relied on Board cases finding that a union's request to an independent employer to sign a renewed multiemployer agreement was not inconsistent with, or a waiver of, its position that the prior independent contract automatically renewed. Id. at 1525 and cases cited therein.

In the instant case, the Union's request to Respondent to sign the new multiemployer contracts did not operate to forestall the automatic renewal of the previously executed contracts, because they were signed by Respondent as an independent employer, which had not delegated bargaining authority to the employer associations. Indeed, the Union made its position clear to Respondent in its June 8, 1993 letter to Respondent, offering Respondent the opportunity to execute and become party to the new agreements but also stating that Respondent's failure to send notification of termination of the 1990–1993 agreements resulted in Respondent's being bound to the contracts for an additional 1-year period.

Nor do I find that Respondent's May 14, 1993 letter to the Union effectively terminated its contractual relationship with the Union. This letter was clearly insufficient to forestall automatic renewal of the contracts. The AGC contract, which had an expiration date of March 31, 1993 [ ]. Thus, Respondent's letter was untimely under both agreements and, as a consequence, did not forestall automatic renewal of both contracts.

I conclude that Respondent's May 14 letter did not constitute effective notice of the termination of the contracts at any time, including for the second 1-year automatic renewal period, as the language of the letter was ambiguous and did not comport with the provisions contained in article XVIII of the AGC contract or the duration clause of the IBC contract.

Specifically, the AGC contract requires either party to serve written notice of proposed changes on the other party and the IBC contract requires either party to serve written notice to the other party of a desire to terminate or modify the agreement. Respondent's May 14 letter states, "We just received your new contracts. Currently we have no work, therefore we are not planning to sign your new agreements." Thus, the letter solely refers to the new multiemployer contracts that were sent to Respondent by the Union for execution. The letter makes no mention of the extant agreements or any intent to terminate or modify them.

Moreover, I find the letter is ambiguous, as it states that Respondent's reason for not signing new contracts is the lack of work, thus leaving open the possibility that it would sign the new agreements if it acquired work in the future.

In connection with Respondent's contention that there was an oral agreement by the Union to terminate the contracts, I point out that in *SCC Contracting*, supra, the employer attempted to establish that the parties to the AGC contract had orally agreed to vary its terms, including changing the contractual manning provisions and allowing the unilateral discontinuance of the contract. The administrative law judge, in rejecting the employer's contention, noted that the employer had signed the contract without modification, and that the AGC contract contained a zipper clause. As stated by the administrative law judge, "the Board has concluded that attempts to vary the terms of a written collective-bargaining agreement valid on its face by parole testimony is unavailing." *SCC Contracting*, 307 NLRB at 1525, citing *NDK Corp.*, 278 NLRB 1035 (1986).

Similarly, in the instant case, as admitted by Lucian Visone Jr. at the trial, Respondent signed both contracts without written modification. Moreover, the AGC contract, the successor agreement to the contract at issue in *SCC Contracting*, also contains a zipper clause at article XXXIII. As there is no contention that the contracts are invalid on their face, I conclude that Respondent should be precluded, under Board law, from varying the terms of those agreements by parol testimony.

In any event, in view of the credible record evidence, I conclude that there was no oral agreement to vary such significant contract terms as the contract's duration, scope of coverage, and other provisions, as claimed by Visone.

Accordingly, I conclude that Respondent was bound to the AGC and IBC agreements at all times material to the information requests, herein.

As set forth above, Respondent amended its answer to the consolidated complaint to admit that the information requested by the Union is necessary for, and relevant to, the Union's performance of its function as collective-bargaining representative of Respondent's employees.

In any event, even without such admission by Respondent, the requested employee's name, wage, and hour data, i.e., information concerning terms and conditions of employment, requested by the Union is presumptively relevant. See *Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984), and cases cited, therein.

Concerning the requested project, contract, and work order information, the Union need demonstrate only "reasonable or probable relevancy" of the information. Such proof is unnecessary herein, however, pursuant to Respondent's admission set forth above. Even absent such admission, the record shows that the Union became aware in 1993 of Respondent's involvement in local construction projects through a request to the Union for a referral of an operating engineer to one of the projects, a meeting with a contractor involved in an-

other project, and by Respondent's billings provided to the Union by a contractor on one of the jobs. Thus, the record shows that the Union had a reasonable objective basis to believe that Respondent was performing work covered by the two contracts at a time when Respondent claimed to have no work at all.

Respondent delayed furnishing any of the information pursuant to the Union's December 9, 1993, and October 19, 1994 written requests, until 1-1/2 years after the first information request was made. An unreasonable delay in furnishing information constitutes a refusal to provide information in violation of Section 8(a)(5) of the Act. See *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989) (4-month delay in complying with information request); *American Commercial Lines*, 291 NLRB 1066, 1083 fn. 79 (1988) (3-1/2-month delay).

Although Respondent provided some of the requested information in June 1995 does not defeat the Union's right to the additional information not provided. See *National Employees District 1199E (Johns Hopkins)*, 273 NLRB 319 (1984).

Accordingly, I conclude that Respondent breached the settlement agreement in Case 3–CA–18309 and failed and refused to furnish the Union with the requested information in violation of Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material since July 13, 1992, Respondent engaged in the building and construction industry has granted recognition of the Union as the exclusive collective-bargaining representative of:

> All engineers, apprentice engineers, assistant engineers, (also referred to as mechanics), firemen, mechanics' helpers, maintenance welders, maintenance welders' helpers, maintenance burners, master mechanics, assistant master mechanics, and all other skills and crafts when within the jurisdiction of the Union, and all persons performing the classes of work covered by the agreement referred to below in paragraph VII(a) no matter where such work is performed within the territorial jurisdiction of the Union.

by entering into a collective-bargaining agreement with the Union (the AGC agreement), effective from April 1, 1990, through March 31, 1993, without regard as to whether the majority status has been established under provisions of Section 9 of the Act.

4. The AGC agreement has automatically renewed until at least March 31, 1995, by the failure of Respondent to seek termination or modification pursuant to the terms of such agreement.

5. At all times material since July 13, 1992, Respondent engaged in the building and construction industry has granted recognition to the Union as the exclusive collective-bargaining representative of:

> All engineers, apprentice engineers (also referred to as oilers), maintenance engineers (also referred to as mechanics), oilers (also referred to as maintenance engineers), foremen, maintenance welders, master mechanics, and assistant master mechanics and all other workers within the jurisdiction of the Union and all persons performing the work covered by the agreement referred to below in paragraph VII(a).

by entering into a collective-bargaining agreement with the Union (the IBC agreement), effective from June 1, 1990, through May 31, 1993, without regard as to whether the majority status has been established under provisions of Section [9] of the Act.

6. The IBC agreement has automatically renewed until at least May 31, 1995, by the failure of Respondent to seek termination or modification pursuant to the terms of such agreement.

7. On December 9, 1993, and October 19, 1995, the Union requested, in writing, that Respondent furnish it with certain information necessary and relevant for the Union to perform and enforce the AGC and IBC agreements.

8. Since December 9, 1993, Respondent has failed and refused to provide the information requested by the Union in paragraph 5 of the above conclusion of law.

9. By such failure, as described above in paragraph 6 of the conclusions, Respondent has violated Section 8(a)(1) and (5) of the Act.

10. By failing to comply with the union request for information set forth and described in paragraphs 5 and 6 of the conclusions, Respondent has violated Section 8(a)(1) and (5) of the complaint.

11. Respondent failed and refused to comply with the terms of an informal settlement agreement in Case 3–CA–18309.

REMEDY

Having found that Respondent violated the Act, I shall recommended that it be ordered to cease and desist, and to take certain affirmative action designed to effectuate the purposes of the Act. Specifically, I shall recommend that Respondent furnish to the Union the information requested by the Union in its letter to Respondent dated December 9, 1993, and November 9, 1994. I shall also recommend that Respondent be advised to comply with the terms of the informal Board settlement approved on October 7, 1994.

[Recommended Order omitted from publication.]